



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 15 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA E-MAIL

Matt Thurlow
Attorney
Baker Hostetler
Washington Square
1050 Connecticut Ave, N.W., Suite 1100
Washington, DC 20036-5304
mthurlow@bakerlaw.com

Re: Besser Company, Alpena, Michigan, Consent Agreement and Final Order
Docket No. EPCRA-05-2018-0003

Dear Mr. Thurlow:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on December 15, 2017.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$39,866 in the manner prescribed in paragraph 39, and reference your check with the docket number EPCRA-05-2018-0003.

The payment is due on January 15, 2018.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

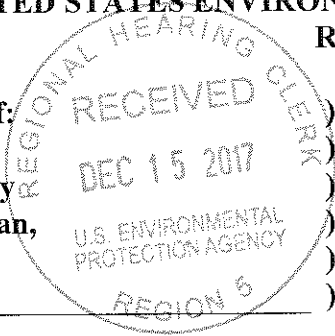
Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Besser Company
Alpena, Michigan,**

Respondent.



Docket No. EPCRA-05-2018-0003

**Proceeding to Assess a Civil Penalty Under
Section 325(c)(1) of the Emergency Planning
and Community Right-to-Know Act of 1986**

**Consent Agreement and Final Order
Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Besser Company, a corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

12. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

13. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for violations that occurred after January 12, 2009, and to \$54,789 per day of violation for violations that occurred after November 2, 2105 and assessed after January 15, 2017.

Factual Allegations and Alleged Violations

14. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 801 Johnson Street, Alpena, Michigan (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. AAA quench oil is classified as a health hazard, or hazard not otherwise classified.

20. AAA quench oil is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

21. AAA quench oil has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

22. During at least one period of time in calendar year 2014, AAA quench oil was present at the facility in an amount equal to or greater than the minimum threshold level.

23. During at least one period of time in calendar year 2015, AAA quench oil was present at the facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2016, AAA quench oil was present at the facility in an amount equal to or greater than the minimum threshold level.

25. OSHA requires Respondent to prepare, or have available, an MSDS for AAA quench oil.

26. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including AAA quench oil, on or before March 1, 2015, for calendar year 2014.

27. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including AAA quench oil, on or before March 1, 2016, for calendar year 2015.

28. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including AAA quench oil, on or before March 1, 2017, for calendar year 2016.

29. At all times relevant to this Complaint, the Michigan SERC, was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this Complaint, the Alpena County LEPC was the LEPC for Alpena County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

31. At all times relevant to this Complaint, the Alpena City Fire Department was the fire department with jurisdiction over the facility.

Count 1 (EPCRA 312/2014)

32. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

33. On October 5, 2017, Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil for calendar year 2014.

34. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil, by March 1, 2015, for calendar year 2014, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2 (EPCRA 312/2015)

35. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

36. On October 5, 2017, Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil for calendar year 2015.

37. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil, by March 1, 2016, for calendar year 2015, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3 (EPCRA 312/SERC)

33. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

34. On October 5, 2017, Respondent submitted to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil, for calendar year 2016.

35. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil by March 1, 2017, for calendar year 2016, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4 (EPCRA 312/LEPC)

36. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

37. On October 5, 2017, Respondent submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil for calendar year 2016.

38. Each day Respondent failed to submit to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil, by March 1, 2017, for calendar year 2016, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5 (EPCRA 312/fire department)

39. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

40. On October 5, 2017, Respondent submitted to the Alpena City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil, for calendar year 2016.

41. Each day Respondent failed to submit to the Alpena City Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including AAA quench oil, by March 1, 2017, for calendar year 2016, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

38. Complainant has determined that an appropriate civil penalty to settle this action is \$39,866 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$39,866 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If the Respondent pays by express mail by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Besser Company and the docket number of this CAFO _____.

40. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number, if any, must accompany the payment. Respondent must send a copy of the check(s) and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

44. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

45. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

47. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws and regulations.

48. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

49. The terms of this CAFO bind Respondent and its successors and assigns.

50. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

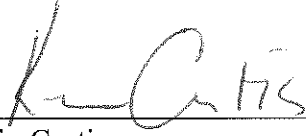
51. Each party agrees to bear its own costs and attorney's fees in this action.

52. This CAFO constitutes the entire agreement between the parties.

53. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and mthurlow@bakerlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

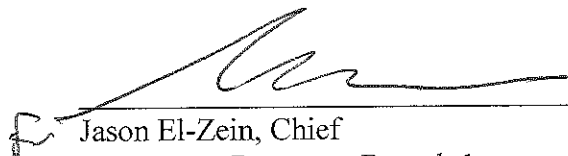
Besser Company, Respondent

27 November 2017
Date

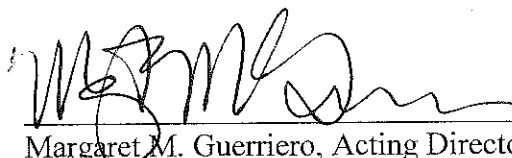

Kevin Curtis
President
Besser Company

U.S. Environmental Protection Agency, Complainant

12/12/17
Date


Jason El-Zein, Chief
Emergency Response Branch 1
U.S. Environmental Protection Agency
Region 5

12/12/2017
Date


Margaret M. Guerriero, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Besser Company, Alpena, Michigan

Docket No. EPCRA-05-2018-0003

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

December 15, 2017

Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Besser Company, Alpena, Michigan
Docket No. EPCRA-05-2018-0003

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on December 15, 2017 in the following manner to the addressees:

Copy by E-mail to

Attorney for Respondent: Matt Thurlow
Attorney
Baker Hostetler
Washington Square
1050 Connecticut Ave, N.W., Suite 1100
Washington, DC 20036-5304
mthurlow@bakerlaw.com


Kevin Curtis
President & CEO
Besser Company
801 Johnson Street
Alpena, Michigan 49707
kcurtis@besser.com
(989) 354-1029

Copy by E-mail to

Attorney for Complainant: Robert H. Smith
Smith.roberth@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: December 15, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5